

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-220512.3

**DATE:** December 13, 1985

**MATTER OF:** BCI Communications Systems, Inc.

**DIGEST:**

1. Protest against alleged defective specification in step one of two-step, sealed bidding procurement filed after closing date for receipt of step-one technical proposals is untimely.
2. Protest not filed within 10 working days after the protester knew or should have known the basis for protest is untimely and will not be considered.

BCI Communications Systems, Inc. (BCI) protests the National Aeronautics and Space Administration's (NASA) refusal to allow BCI to compete in step two of a two-step, sealed bidding procurement for telecommunications requirements under NASA solicitation No. W-10-34654/HWD.

We dismiss the protest without requiring the submission of an agency report, pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.3(f) (1985), because on its face the protest is untimely.

BCI alleges that NASA has refused to allow it to compete in the second step of this procurement because NASA believes that BCI does not have the "Demonstrated Capabilities" specified in subparagraph L.1.4.1 of the solicitation regarding the ability to install and cut over a system the size and complexity of the one specified for NASA Headquarters. Admitting that its own demonstrated capabilities "come slightly short of the requirement in this solicitation," BCI points out that it maintains contractual working agreements with South Central Bell Advanced Systems and has been a subcontractor to Bell Atlanticom Systems, Inc. (Bell), which relationships should allow BCI to meet the demonstrated capabilities test. Still, on October 25, 1985, BCI reports that the contracting officer notified BCI that NASA would not relax the requirement for proven capability and that BCI's technical proposal therefore was

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considered to be unacceptable, thus, in BCI's words, "ignoring BCI's relationship with South Central Bell." Furthermore, BCI argues that since the potential awardee, Bell, allegedly is using a subcontractor to qualify, BCI should be afforded the same opportunity. BCI filed its protest with our Office on November 13, 1985.

To the extent BCI protests against the specifications, a protest against alleged solicitation improprieties which are apparent prior to the closing date for receipt of initial proposals (here, the closing date of the step-one request for technical proposals issued as part of the two-step procurement) must be filed with either the contracting agency or our Office prior to the closing date for receipt of technical proposals. 4 C.F.R. § 21.2(a)(1) (1985); Birdsboro Corp., B-218100, Feb. 11, 1985, 85-1 C.P.D. ¶ 180. Since BCI did not protest the solicitation requirement for demonstrated capabilities until, by its own admission, after the contracting officer refused to allow it to compete in step two of the procurement, BCI's protest concerning the allegedly defective specification is untimely and will not be considered.

Moreover, a protest based upon other than apparent solicitation improprieties must be filed not later than 10 days after the basis of the protest is known, or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1985). BCI admits that it was notified by the contracting officer on October 21, 1985, that in view of the solicitation's requirement for demonstrated capabilities, it would be precluded from competing in step two of the procurement. Thus, BCI's protest filed November 13, 1985, more than 10 working days after that notification, is untimely. See Taurio Corp., B-219008.2, July 23, 1985, 85-2 C.P.D. ¶ 74. Similarly, the issue relating to the disparate treatment vis-a-vis Bell is untimely.

The protest is dismissed.



Robert M. Strong  
Deputy Associate General Counsel